Mr. M. Sivarama Menon *(Advocate-General):* Sir, at this stage, the Government wish to move an amendment to the provisos 2 and 3 passed yesterday. The principle is not at all changed; the principle being that during the boom period when there is an excess in the market value of cocoanuts owing to large fluctuations in the prices, the excess price over the contract rate is to be shared equally between the jenmi and the tenant, and that during depression, the loss should be shared equally between the landlord and tenant. That principle still holds good. What is now sought to be moved is a simpler amendment than the one that was adopted yesterday. The House will remember that yesterday during lunch time, this matter was considered and the amendment of the Hon'ble Member for Kanayannur was moved, on the spur of the moment. It was even, then anticipated that the wording will have to be further simplified at the third reading. I move that for the provisos 2 and 3, the following be substituted:

"(2) Where the money value computed under this sub-clause exceeds the pattam payable in money fixed under the contract of tenancy, the pattam payable shall be the money pattam fixed in the contract of tenancy together with half of such excess."

"(3) Where the pattam payable in money fixed under the contract of tenancy exceeds the money value computed under this sub-clause the pattam payable shall be the money value computed under this sub-clause together with half of such excess".

Now these provisos read better and can be understood better than the amendments passed by the House. There is absolutely no change in the principle.

Rao Sahib K. Ayyappan *(Ezhuvas-Kanayannur):* I accept the amendment.

Amendment put and carried

Motion put and carried

The Cochin Verumpattamdars Act (Amendment) Bill— (Mr. P. Kumaran Ezhuthassan)

Mr. President: The House will now resume consideration of Mr. P. Kumaran Ezhuthassan's Verumpattamdars Act (Amendment) Bill.

***Mr. P. Kumaran Ezhuthassan** *(Vadakkancheri):* Sir, before proceeding further, may I know, on a point of information, whether because of the fact that the Council will be prorogued this evening, as observed by the Hon'ble Chair, these Bills will be carried over to the next Council at the stages at which they stand to-day, in the light of that, if it will not be profitable to pass over this Bill as also the next and also the next one, *i.e.*, the whole of the agenda, for Thursday, and get on to the non-official resolutions rather than spend time over the discussion here without reaching the desired goal. Will it not be more profitable and could not be arranged? That is the suggestion that I make.

Mr. President: It is entirely a matter for the House to decide, but I suggest that these Bills having advanced so far, it would be useful to complete the stage of second reading of at least one of them. if not of the others. I would suggest that for the consideration of the Hon'ble Members but if the Hon'ble Members prefer to pass over the legislative business, it is for them to decide.

Mr. K. Narayana Menon *(Mulakunnathukavu):* Sir, may I point out one thing. There are a large number of amendments tabled to these Bills and I understand that the amendments also require further amendments as I found now tabled. I submit that we are not going to reach the goal even if we continue the discussions till the evening. In that view if it is feasible both for the Mover and for the House, it would be better to postpone the discussions.

Mr. President: I would suggest the Hon'ble Mover may put it to the House that further consideration of his Bill be postponed.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Sir, my suggestion is that all the Bills may be postponed.

Mr. President: The Hon'ble Member is not responsible for all the Bills. He is only responsible for his Bill.

***Mr. P. Kumaran Ezhuthassan** *(Vadakkancheri):* I am not going to move for the closure of the discussion of my Bill.

Clause 2

Mr. President, Sir, I move that a proviso be added to clause 2 as reported by the Select Committee. The proviso that I propose to add reads like this: With the correction made with your permission, the proviso is like this:

*Speech not corrected by the Hon'ble Member.

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" Provided that suits in eviction filed on and after 30th Makaram 1119 shall be governed by the provisions of this Act". To understand the implications of that amendment, it will be necessary, Sir, to invite the kind attention of this Hon'ble House to the clause in the draft Bill as it stood. That clause read like this: "It extends to the whole of Cochin and shall be deemed to have come into force from the 19th of Kumbham 1118", that is the date on which Act, VIII of 1118, the existing Verumpattamdars Act received His Highness' assent. In other words, these provisions which may he passed, if they are going to be passed may be considered to have been in the original bill itself in other words give this amendment act the whole of it retrospective effect than to the date of the original Act. That was the purpose of the clause 2 in the draft.

In comending this amendment for a dispassionate consideration of this Hon'ble House and a correct voting there on after discussion I have to crave the indulgence of this House to bare with me for a couple of minutes to allow me to place before them the background on which they may be pleased to view this amendment. I will briefly state like this. As observed by me in my dissenting minute to the Select Committee report, the history of tenancy regulation has various glaring features about it, if started from 1114 Kumbham. There was a significant announcement from responsible quarters, *viz.*, when the Diwan occupied the Presidential Chair, here that the bill will be introduced at the earliest possible date. He also said, Sir, that because the decision was made known to the public even earlier to that announcement he was aware, he said, that very subterfuges are being resorted to by a certain class of Jenmies—I lay emphasis to certain class of Jenmies—to defeat the laudable purpose of the proposed enactment in this way that tenures which are considered will be incorporated in the proposed act as evictable are being attempted to be made so and really inevicable are made attempted to be made evictable under the proposed act, such things are being done by a certain class of Jenmies had reached his ears, he announced at that time. And rightly in the next sentence he said, Sir, that these nefarious activities of that particular class of Jenmies will not be allowed to prevail to the detriment of the tenantry, the back-born of the country in as much as the Government as also the idea of giving retrospective effect to that prospective Act back to Kumbham 1114. We came on, Sir, and unfortunately for the tenants of the land most unfortunately for them the Bill promised by the Government brought very quickly in the next Vrischigam Session could not proceed further because of certain changes in the working of the mind of certain Quarters. So from 1115, Meenam when we could have the opportunity of considering that good Bill, not as good as the Bill we have now, it has got its on features, till in the circumstance of those dates being considered in the month of 1115, unfortunately for the tenantry I repeat could be considered only in the month of Makaram 118,3 long years after. Not even a proclamation that was humbly requested to be passed to the effect that till the prospective Bill of the Government becomes Law a stay in the filing or the disposal of suits in eviction could be had. That also was not granted and that was for very good reasons. For the non-granting of that Proclamation the reason was that the Bill that was reported upon by the Select Committee contains a clause giving retrospective effect to back of 1114, so what is the fear. But unfortunately again for the tenantry, Sir, when in 1118 the draft Bill of the present Act was brought here mysteriously that clause had disapperded, mysteriously I use the word deliberately with the result that the existing Act in spite of the strenuous efforts made by blind pro-tenant members, I am quoting my Hon'ble brother from Chittur blind pro-tenants, not that I accept it, like me in spite of the strenuous attempts made by them because of the commitments that the Government made earlier because of the fact that we want that our Government to respect their own words and not recile from that position, in spite of all these attempts made by me and friends who think like me in 1118 Makaram when this question was considered, that attempt of ours failed all to our ignominy. The circumstances show how we failed there is no time to dilate upon. I leave it at that.

Now, Sir, the position is this. There was an attempt by the people to have retrospective effect to the Verumpattadars' Act and particularly to certain particular sections also failed. That having failed the Bill passed by this Council became Law in record time due to the co-operation of the Treasury benches more especially of the Law Member. The Bill that was passed in 1118 became Law on 19th Kumbham 1118. They were certain statutory provisions there which does not necessitate the bringing in of amending Bills earlier than the date on which I came forward with this Bill. The leave to introduce this Bill was sought by me and was granted after the strenuous opposition of my elder brother sitting there breaking all the conventions of this House

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running for 19 years or more: That leave was sought, Sir, on the 30th of Makaram 1119 only a few days after because under the existing act time was given for payment of dues both arrears and the current dues for 6 months and there was a gracious Proclamation extending that period further upto the 30th Vrichigam 1119. Till then I thought that there was not fear for tenants to approach this Council for appropriate relief on this behalf. Hence it is, Sir, that I delayed sitting for the leave of the House upto 30th Makaram or I would have come up earlier. My Bill was ready but because of the Proclamation and the reactions that would follow I thought that the Jenmi class as a whole would favourably react I delayed the motion for leave to introduce the Bill. Having referred to that date on which I sought for leave I will immediately go to one portion of my amendment. That is about the date of coming into force of the proposed act, *viz.*, 30th Makaram 1119. So that is the significance of that date. That is the day on which leave for the introduction of this bill was sought, unless the previous enactments and procedure relating to the Bill having been opposed even at that stage breaking the convention again got such publicity amongst the public even at that stage because that attitude of my Hon'ble brother from Chittur was commented adversely and to some extent mercilessly. Therefore, I submit, Sir, that this Bill that we are now considering, that is now before the anvil of this Legislative Council was known to the public, both the tenants who were benefitted by it and the Jenmies who in their imagination thought that they would be adversely affected by really not, both these sections connected with this matter from the tenancy law new that the Bill being placed before the House. Hence the significance of the date 30th Makaram 1118.

Sir, I had come to the stage of the introduction of the Bill in 1119 Makaram with pointed reference to the subject matter of this amendment, *viz.*, suits in eviction filed after that shall be governed by the provisions of this Act. Sir, suits in eviction are contemplated by clause 82 of the existing Act and again may be sub-divided into two classes of eviction once suits in eviction prior to the passing of the Act and suits in eviction for the current years. On the appropriate fixed date with the so called *Locus Pe itentiae* in the language of the Hon'ble Member for Law which I will contradict later, of three months granted under the Act. These are the two classes of eviction suits contemplated under section 82. What is contemplated to be gained if it is my good fortune to have this clause passed,—I have my own misgivings about the fate of the amendment—is that the benefit suits in eviction placed before the Judiciary of our country may not be dealt with in all haste, in post haste and in hot haste by a particular class—I don't touch a particular class of Jenmies but I hamour the other class—the certain class of Jenmies, Sir, did pester our Civil Courts with eviction suits. Is it for large arrears, Sir? No. The whole paddy due was paid in kind not even within the time allotted, *i. e.*, 3 months but on the appointed date, but there was a punch of bananas worth As. 8 that was not paid, or deliberately not accepted—the fool of the tenant thought that there was nothing harmful to him—for the recovery of that a number of suits were filed. If the suits were filed for the recovery of arrears of pattam I have no complaint at all. It only shows the smallness. But taking shelter under the provisions of the Act the imperative provisions of the Act, Clause 8, suits in eviction on the ground of arrears of the bunch of bananas worth 8 annas had been filed. I will show statistics supplied by the Government at my instance. Such suits have been filed and in very large unmbers. I don't say in all but in a good many of them the reason is that. What is the result? The Courts were ordered—again I use the word ordered deliberately—but such an expression in the Act should not have been there is my contention, had been my contention. At that time, we were helpless. They ordered to decree surrender and they did obey. After all that the Legislature is above the Judiciary is a proud privilege provided it is properly exercised and rightly exercised and not in haste as the case is here during the last two years. Now, Sir, suits in eviction were thus decreed. In many cases decree is being executed in exactly equal hot haste but in certain others after having obtained decrees realising the hardship that will be caused to the tenant if they immediately rush on to eviction. I mean to taking possession under the decree granting surrender, but being fortified with the arm with which the poorer tenant can be struck if he does not play to their tunes later when they got that arm, that weapon, with which they could effectively strike the tenant, there are certain decrees not executed by them. That is the position, in which the tenantry of the country is lying itself because of the existing act. Many suits in eviction otherwise would not have been filed on flimsy grounds. A certain class of Jenmies are now armed with weapons with which to strike the tenants at their will. The object of this amendment is to see that the particular class of tenants are saved by the right action of this House which at least nominally represent the people of the country inclusive of the tenantry as also of the Jenmies. I do not forget them, Sir, because that will be one of the arguments from the other side. I anticipate the Hon'ble the Law Member and just make reference to that.

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This House has got a duty to see that without any the least prejudice to any of the actual rights of the Jenmies the untold harm of being driven away from one's land or home which he was having as his own on which he was spending all his labour as also money, considering that he should be able to enjoy it for his life-time. Now to save him, Sir,—I again emphasise without doing any the least harm to the Jenmi concerned—it is to achieve that object that I have tabled this amendment. Now, Sir, I have the statement that if this amendment is accepted the Jenmies who had been unkind enough to take the matter to court on flimsy grounds and arm themselves with the necessary weapons of the decree unenviably given by our court, is he going to be in any way prejudicially affected by this amendment ? What is the consequential effect of this amendment being graciously accepted by this House inclusive of the Treasury Benches ? This amendment cannot stand by itself and the consequential amendments have been tabled. I made a passing reference to that. We will have to consider those amendments. If this amendment is to be carried and accepted and becomes law, the clause regarding the eviction of suits will be taken back to 30th Makaram 1119. The benefit as shown in the other amendment is consequential from this: "23. (1) A lessee against whom a suit in eviction is pending may within 2 months of the passing of this Act or within a month of the hearing of the suit or appeal whichever is later apply for relief under the provisions of clause 8 (2)". The lessee may deposit the arrears decreed with interest plus costs plus execution costs, if any, incurred. That is as far as the Jenmi who has got the decree both for arrears as also for surrender is concerned, the consequential clause is there. The whole amount due to the Jenmi by way of arrears, interest, court costs, inclusive of execution costs may be allowed to be deposited within a particular period, according to my amendment and for a smaller period according to my friend's amendment. It is clear that it is beneficial to the tenant because he is not driven away from his holding. He has to pay as his part of the business all the arrears due to the Jenmi and the costs incurred by the Jenmi and save the property. What is the harm to that Jenmi who has been unkind enough during this short period to take to the court of law. Instead of that money having gone to his pockets a few months earlier, it goes into his pocket a month or two months subsequent to the passing of this Act which unfortunately has to be put off a few months hence. My contention therefore is that the acceptance of this amendment is not going to prejudicially affect that unkind Jenmi even to any material extent. That is the consequence of the amendment. Without taking up the time of this House any further and reserving all my arguments in my reply I commend this amendment for the dispassionate consideration by this Hon'ble House and for correct voting if it comes to that.

Mr. C. V. Iyyu *(Kunnamkulam):* I second the amendment.

***Mr. K. Narayana Menon** *(Mulakunnathukavu):* In the same clause I have also tabled an amendment in almost like terms. I have only to add a few words to what has been submitted to the Hon'ble House by the Hon'ble Mover of the Bill. The main point which impelled me to put up that amendment is the proposed amendment in clause (4).

"In section 8 of the Act—

(1) in sub-section (1)—

to clause (c) the following proviso shall be added.—

"Provided that where the pattam unpaid represents only the Puravaka dues or the value thereof payable by the verumpattamdar, the lessor shall be entitled only to sue for the recovery of such dues or value and not for the eviction of the verumpattamdar from his holding."

Such a clause was not in the original Bill and this amendment which has been accepted by the Select Committee and which I understand will be passed without much opposition is necessary for the purpose of saving suits which may come under the category and is an essential necessity. I may submit to this House from a bit of personal experience that in certain cases there are tenants strictly so-called tenants who have executed leases on verumpattam. It is common experience that the Puravaka dues—a bunch of arecanuts, a bunch of plantain or one jack fruit—provided in the pattamchit are never paid in kind at any time before the passing of the Verumpattamdars Act. Taking advantage of definition contained therein and also taking rather undue advantage of the neglect on the part of the tenants to pay those things in due time, I know at least of one case which is pending in which the arrears are only 8 annas 9 pies, and that representing the Puravaka dues. If such were the capricious moods in which the landlords are inclined to enforce their rights I think it is within the power of this Council, I would rather

*Speech not corrected by the Hon'ble Member.

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submit it is the pertinent duty of this House to see that such mischievous and capricious methods of litigation using safeguards as an engine of tyranny, should never be allowed by this House. That is the main and perhaps best reason that compelled me to table this amendment. The other arguments about the retrospective effect of the necessity to have it on 30th Makaram 1119, the date at which the Hon'ble Mover of this Bill sought leave to introduce it in this Council have been placed in detail before this House by the Hon'ble mover himself. I have only to add one more point to the various points that he argued on that behalf and I would in anticipation respectfully answer the Hon'ble Member for Chalakkudi, Mr. Moothedan in his suggestion as to what has become of lands which has already been reduced to possession. It is a possession which is perfectly natural, legal and moral, but our legislature has proved more than once that that is no morality of this House and the Government. When the Agriculturists' Relief Act was passed, it will not be denied by anybody, that it gave relief to those who are chronic defaulters; in other words those who are influenced to pay their dues in due time were all fools. Similarly also it says that those persons who unfortunately or otherwise happened to be purchasers were deprived of their property. So that there is nothing strange either to the Government of Cochin or to this Hon'ble House to say that those who have had expeditious remedy has succeeded and others have not. Therefore in tabling this amendment and requesting that it may be accepted by this House I represent the morality or the morale behind the amendment. Such precedents have been respected, honoured and accepted and that is again my plea that the same may continue until we are told or we are aware that other methods are available.

Yet one more point in support of that position which I take up is that retrospective effect should be given. It is not known why all on a sudden on 30th Makaram 1119 or soon after when probably the last days for the payment of under the extended period that was granted by the benign Government to pay up the dues had expired, there was a flock of suits in eviction and certainly there was absolutely no provocation so far as we can study the things at first hand. Why should there be a flock except it be the anxiety somehow or other to get at the properties leased out to the Verumpattamdars. If the law is abused the same law will come to the help and save the abuse. That is my submission.

As regards the effect of that amendment and the difficulty that may be encountered in the working thereof I have tabled other amendments to procedural law. I shall move at the proper time. Therefore I submit that it may in the strict eye of law add in the ordinary interpretation of statute be rather strange because retrospective effect is generally not the rule but the exception. But I submit that in the days of exceptional circumstances this amendment may kindly be accepted.

***Mr. T. P. Poulose** *(Kanayannur)*: I support the principle underlying this amendment that it should be made applicable to all cases of forfeiture already incurred but eviction not yet effected on the basis of that forfeiture. To that extent I take the view that this amendment has to be supported. Ordinarily the idea of giving retrospective application to a statutue is not very much relished by legislatures. But to treat this suggestion that it should be made applicable for forfeitures already incurred but not yet enforced is not actually giving it retrospective effect. It is a misconception to think that it is giving retrospective effect. Let us examine the nature of the provision. The nature of the provision is only this. The statute provides that non-payment of rent involves forfeiture and after forfeiture has been incurred the statute says that the court has power to condone forfeiture. Now this power has to be exercised after forfeiture is incurred whether the forfeiture be one that has been incurred after the amending Act has come into force or whether it is incurred before the amending Act comes into force. The question is when the power to grant relief against forfeiture is to be exercised then the application of this provision is not at all of retrospective application for provision. Because in the very nature of the exercise of the power, the power can be enforced only after forfeiture and it has to be enforced before and that eviction is after forfeiture. So that is a power to be exercised after forfeiture and before eviction. Now if the Act is passed particular cases happen to fall within that interim period, after forfeiture and before eviction without giving any retrospective effect, you can apply the provision. I do not see what harm is there. Now we are giving this relief against forfeiture on account of the fact that we feel that even after forfeiture the *locus penitentiae* has to be given to the tenant. Locus penitentiae has been given to the tenant in other places under the Transfer of Property Act and the Malabar Tenancy Act. There are identical

*Speech not corrected by the Hon'ble Member.

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provisions in the Transfer of property Act which is an all India Statute and also in the Malabar Tenancy Act which is a statute similar to this. So it is not a very extraordinary provision. That principle has been enforced not only by the statute. If we examine the decision of British Indian High Court as well as the Courts in England we will find that courts were always unwilling to give effect to penal provisions. But they have always given relief against forfeiture incurred on account of non-payment of rent because the policy of law is always to discourage penal provisions and to give that amount of fixation which will be sufficient to meet the ends of justice. Now what is the purpose for a provision like this in the Verumpattamdars Act that non-payment of rent shall involve forfeiture? The idea is that rent should be promptly and readily paid. It is only to enforce regular payment of rent that we have got a provision there. It is not there to provide for the fitfalls of the tenant. The idea is that rent may be regularly and promptly paid. Now if rent is not paid regularly and promptly what is the extent of the damage incurred by the landlord? Of course, he has to wait for his rent. So he must be paid interest: If he goes to court he must get his costs. So, all these make sufficient compensation for the breach of the condition of which the tenant is guilty. Courts have held even without statutes that relief should be given against forfeiture. It is only such a provision that we are incorporating in this Act. What is the harm in giving this *locus penitentiae* to cases of this nature. Forfeiture incurred before this as well as that incurred after the amendment, the principle applicable to both is the same. We only consider the question of restrospective provisions which are of an exproprietory nature. This is not like that where restrospective application has to be tabooed. Personally speaking, I do not know the courts would subsepuently interpret it. To my mind it appears that even if there is not this amendment, courts have still the power to apply the provisions to pending suits. That does the section say? When a verumpattamdar is sought to be evicted the court may, if on the hearing of the suit the whole amount of the pattam with interest and costs is deposited, pass an order against forfeiture. This is also what the amending Bill says. So, what will be the effect of this clause going into the Statute Book? It can with very great reasonableness be argued that this power can be exercised by the courts by virtue of these provisions in all suits which go up to them, even in the case of all suits which are before it after the passing of this Act. It does not say it can be exercised only in the case of suits subsequent to the passing of this amendment. So, even under this provision of applicability to pending suits, there will not be much difficulty. Probably, my Hon'ble friend wants to make it clearer, and probably he also wants to make it applicable to decrees already passed. This provision, if it stands as such, will not be applicable to decrees already passed. To all pending suits, even without this amendment they can grant.

Mr. M. Sivarama Menon *(Advocate-General)*: Government are constrained to oppose this amendment. The classes of suits to which this amending provision can become applicable can be divided into two classes, that is verumpattamdars who have not paid the arrears which accrued due prior to the passing of this Act within the time given to them by the provisions of the Act—that is those who have defaulted payment of arrears within the time provided in the Act. Then secondly those persons who did not pay their dues on the due date as provided for in the contract of tenancy after the passing of this Act. With regard to those persons who did not pay the arrears prior to the commencement of this Act, they were given a larger time of 6 months which was again extended by a Proclamation. They have been given enough time and they have not paid their dues within the larger time or the extended time. Now the position taken up by the Hon'ble House is this. When even yesterday the Hon'ble Member for Kanayannur moved an amendment with regard to the pattam of cocoanut gardens he said that we must apply the law as it stands on that date and that a subsequent change in the law should never prejudice a person if he has done anything under the provisions of the law in force on that day and on that reasonable ground I gladly accepted his amendment. Today we hear that if a person has not complied with the provisions of the statute as it stood on a particular date to entitle him to the benefit conferred under that Act, by all means condone his default because he has violated the law. The proposition is only that whatever be the law which is consistently violated by the tenant, same heir at the expence of the landlord. I have had occasion to deal with the retrospective operation that was sought to be given just when the original Bill was taken into consideration here and later on in the other amendments moved by the Hon'ble Member for Wadakkancherri when he wanted an extension of the time for payment. Then I announced on behalf of the Government that the fundamental basis of the legislation is that you are given fixity with an invariable rent, on condition that you pay your dues at the correct appointed time under the Act. If you are prepared to pay your dues at the correct time,

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then that Act vouchsafed fixity of tenure with an invariable rent, whatever be the extent of profit that the tenant may derive out of the holding later on. A jenmy can in such a case only look on and accept the rent that he has fixed in days gone by. It was then urged on behalf of the Government that the tenant should be under no misapprehension, that they should not be under the false belief that there is likelihood of the Government acceding to their request either for extension of time or condonation. I warned the tenants that they should pay up their dues, in time that they should not be in a fool's paradise, and that it is their property that they will lose. Yet this House finds that this amendment is moved that the Bill may practically be given retrospective operation from 30th Makaram 1119. I say that if within the larger time vouchsafed under the Act and the Proclamation a tenant did not pay his dues in time, there is no duty cast upon this House to come to his succour. If within 3 months a tenant did not pay his current dues, then also there is no duty at all cast upon this House to go to his succour. Why? Because after the passing of this Act, every tenant knew that he has got a precious right of fixity and invariable rent and it is up to him by prompt payment to protect that right. He was given a large space of time within which he should make the payment and when fixity of tenure with an invariable rent was granted to him his economic position was also enhanced and even if he had no ready cash to pay the pattam, he could have easily raised money on the security of his property: A person who has committed such defaults is not entitled to be looked upon with any favour by this House and Government take the view that it is by legislations of this nature by which all defaults of the tenants are condoned in season and out of season, that some of these tenants become chronic defaulters, in spite of their capacity to pay. When such is the position let us consider what is the position of the jenmy. It was stated on the floor of this House last year what is it that the jenmy loses by accepting this amendment. He is getting his costs, he is getting interest. But should not the jenmy get his dues in time? Is it enough if he is given food after his death? The power of courts to condone forfeiture was taken away to induce prompt payment in time the sufficient time given by the Act. It was then stated as a matter of argument "we have no faith in the courts". On behalf of the Government and as a member of the Bar, I have to refute it, and state that the Government have the utmost confidence in the courts, and that the Government rests on the bed rake of the judiciary. When the Select Committee wanted to make use of the word "may", there are non-official amendments which have been tabled to change the word "may" into "shall". Why? I do not wish to retort. I leave it there.

Mr. President: Does the Hon'ble Member propose to continue his speech further.

Mr. M. Sivarama Menon *(Advocate-General):* Yes, Sir.

Mr. President : Then he may continue after lunch.

The House rose for lunch at 1-30 p. m. and reassembled at 2-30 p. m. with the Deputy President in the Chair.

Mr. M. Sivarama Menon *(Advocate-General):* I was saying that there is no reason or duty cast upon this House to come to the succour of a tenant who has defaulted in spite of the great advantages conferred upon him by the Act. Default committed in the payment of pattam within the time fixed in the Act has vested in the jenmy a right to sue the tenant in eviction. That cause of action is complete by itself; and this amendment seeks to vary that right of eviction conferred by the cause of action which became mature on that date. This amendment is not a matter which affects only the procedure in the trial of a suit. This is a change in substantive rights and not in the law of procedure. In the matter of change in the substantive law, I do not think that an amending Act passed to-day will apply to a pending suit unless the Act itself makes express provision by giving retrospective effect. Regard being had therefore to the general provisions, in the General Clauses Act and the wording of the Amending Bill, I do not feel that pending suits will get the advantage that is foreshadowed by the Hon'ble Member for Kanayannur. If, as a matter of fact the courts accept a different interpretation, then let the pending suits get the benefit. You will then be realising what you aim at by this amendment. Whenever there is a defaulter, attempt is made to rescue him and the person who respects the law and complies with its provisions is always the person who does not at all stand to gain. That is bad policy and looked at from the standpoint of encouraging the tenants to do their duties properly, the amendment is not acceptable. If we, out of mere sympathy give relief, then that is an incentive for him to be a chronic defaulter always. There should be an occasion when he will open his eyes and then do his duty. The interests of the landlord should also be borne in mind. Therefore on that broad principle, Government oppose

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this amendment. This amendment is rather too general in its terms. You will find that in spite of the Verumpattamdars' Act there are verumpattamdars who are generally leaving large arrears. The persons who have failed to pay the Jenmy within the extended time any of the old arrears do not deserve any relief.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Have you got statistics that most of the suits are for such arrears?

Mr. M. Sivarama Menon *(Advocate-General):* I never said 'that most of the suits are for very old arrears but I said there are some. This amendment is intended not only to help the unweary tenant who by sheer forgetfulness failed to pay the Puravaka dues but also designed to help, in spite of the benefit that is conferred on him, a chronic defaulter. I heard the Hon'ble Member for Mulakunnathukavu pleading, even circumscribing his amendment and concentrating his attention mainly on the failure to pay Puravaka dues in time. Of course, that question has not been independently considered but the Select Committee thought, that a failure to give Puravaka dues in the case of a person who has paid his pattam in due time, should not be vested with the punishment of eviction. So the Select Committee was for compelling the Jenmies to sue for arrears of Puravaka dues only and not to sue for eviction. So far as the Government are concerned the Government take the view that there is no need at all to accept this amendment and on the other hand the Government oppose it.

*__Mr. P. Kumaran Ezhuthassan__ *(Vadakkancheri):* In reply I utilise this opportunity to expose the hollowness, the complete hollowness, I am sorry I have to use that expression, of the reply of the able representative of Government in the Law Department. What has been stated by him, Sir, is that while the original bill was being considered and amendment similarly worded or having the same effect were being moved and considered the argument that there is first the provision for payment of the dues within a long period of three months have been provided in the Act and hence there is no necessity for a further *locus penitentiae* as seen in section III of the Transfer of Property Act of Cochin. The *locus penitentiae* is there not *locus penitentiae* but as a provision expressly made in the statute and the argument was that if a further period, a long period of how much, fifteen days that is all what the amendment contemplates, if given that will be unduly putting off the original dues of the Jenmy by the promising of which the Government thought in a so called ex-proprietory measure to hold the balance even between the Jenmy and the tenant. That is the burden of the song and that was the main plank upon which both then as now, then for opposing the attempt at introducing in the main Bill what is now reported upon by the Select Committee, namely the condonation clause. Now the same argument is repeated for the amendment. I started by saying that the argument is completely hollow. I shall try to show how it is hollow. Now, at the time of the consideration of this Bill with regard to the condonation clause, I had, I may say, the privilege of tabling an amendment, that is in the printed agenda of amendment of 1118 Makaram. It stood as amendment No. 53 and it will be pertinent to read that amendment. That is with reference to clause 8 (2). Clause 8 (2) has now found its place in the Statute under which the tenants are grinded. It reads like this in the statute and that was the form it had at the time of the consideration.

"Where the eviction of a verumpattamdar is sought on the ground specified in clause (c) or (*d*) of sub-section (1), the court shall not either extent the time for or condone the delay in the payment of such pattam or arrears, but shall be bound to order the eviction of the verumpattamdar from the holding".

This was the exact form, word for word, in the Government Bill that was considered in 1118 Makaram. That clause I wanted to be amended with this. Portions of the clause as it then stood, all the words occurring after "sub-section (1) "namely" the court shall not either extend the time etc." be deleted and some new words be put in its place namely the provisions of section III of the Transfer of Property Act. That was the amendment. That was a motion that I made at that time. That was debated and the present arguments against the amendment were brought forward in opposition to that amendment then. It had to be put to vote. In this connection it is necessary and it is my duty, to say in introducing the Bill at that time, not the mover of the Bill, but the Hon'ble Member for Revenue, but the Hon'ble Member for law stated "here are the provisions. There are so many amendments, many of them useful, some others redundant and some others not acceptable." Without saying that some of them are

*Speech not corrected by the Hon'ble Member.

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acceptable, he was pleased on behalf of Government to say that this is the position. If the House is definitely of opinion that on certain matters the position should be such and such, the Government is prepared to reconsider the position with all sympathy which alone made them bring forward this Bill. That was the statement yesterday, helpful statatement made by the Hon'ble Member for law. If an amendment to clause 3 to apply the provisions of the Transfer of Property Act, section III namely that condonation against forfeiture was a matter of fact moved and discussed and unfortunately lost—I am not prepared to say that it was due to the fault of the Government which earlier in the discussion had stated that they are prepared to react and respond to a decided opinion of this House (*here, here*). Therefore to our utter shame, to the shame of non-official side it was—I have the figures—25 were against the motion including the 12 Members of the Treasury Benches and 20 for the motion. Then I find from the discussion that 4 Hon'ble Members have not spoken against the motion. I deliberately avoided poll being noted to save our face. To save the face of some of the Hon'ble Members, on this side, I deliberately unlike my usual course did not demand a poll. So, you have now to analyse the result of the opposition, the number of the opposition from a process of clean reasoning.

12 Government members who necessarily and consistently with their previous statement if you show a decided attitude of having that amendment we are here, though without any explicit commitment we are here to spend our thought and do as far as possible. But the opposition from particular members who took part in the debate by speeches and who showed how their mind was working, Government understood here is a House warring against itself and therefore consistenly with their helpful, very gracious statement made on behalf of Government consistently with that I say they decided to vote against because they knew how the wind blew on this side. Therefore, I certainly do not blame Government for voting against it, because the fault was ours. I refer to it because in conformity with the arguments of the Hon'ble Member for Law just now he stated that whatever be the number of amendments however they may be worded, the main amendment is this. He is right. The amendment standing in my name as also in the name of my friend from Mulakunnathukavu introduces a new clause in the Act. There is some mistake in the agenda. Is not the mistake of Secretriat? It was stated by the Hon'ble Member for Law that this is the main question, therefore you have to revet your attention upon this in the light of the opposition that we have not thrown out, it is for you Hon'ble Members to decide the fate of this by voting against this, atleast a few of you. That was the appeal made though not in express words. It is because of that, it is because of the fact that it was our fault at the time of the introduction of the Bill. That we were not able to get through. That is the reason why I refer to that now. Therefore I make a strong appeal with the idea of getting the Hon'ble Members down into their seats though it be the last at it. It is with that idea that I cry out like this so that Hon'ble Members my friends the Hon'ble Non-Official Members who are in the lobbies even may I hear the cry that I make, cry for their merited faults and making the cry on behalf of the tenantry of the country. I am not hopeful of success. Anyhow I shall make the attempt.

Though the Government oppose the condonation amendment at the time of the introduction of the Bill I am going to say and I am supported by arguments, convincing according to me and convincing again according to minds, not prejudiced minds, minds that have let taken their decision. I am going to tell the Government, Sir, that their opposition now is not of the sort that they did make in 1118 Makaram. That was right because we showed to you how the wind blew. But now it is unpardonable because what you opposed then was brought forward here through this Bill by me. Not a word was said when the matter was discussed at the introduction stage by the astute Hon'ble Member for Law about this Clause. Clause 2 is a clause which is not touched by the Hon'ble Member for Law while he had seriatim taken objection to Clauses 3 on-wards down to the very last except these that wanted the incorporation in this Act of the provisions of the Tenancy Act. All the others one after another in the order as they appeared in the draft Bill were very strenously opposed, not opposed, in the bad spirit, in the form in which it is brought it is not acceptable and so Government is constrained to oppose it. He was pleased then also to throw out helpful suggestions in the way of, if the Clauses were so the Government's position would be different. Let us proceed to the next stage, Sir. With the Hon'ble Member for Law as the Chairman of the Select Committee, the Select Committee that has now reported upon the Bill was appointed. As I stated in the report of the Select Committee very serious consideration was had upon the important Clauses of the Bill one after the other. I must here express a word of thanks to the Hon'ble Member for Law for having found time having exerted his very best to make the Select Committee report first and through

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that to make the position of this House also one which may not be objected to even by the jenmi members as such and the jenmi—inclined Hon'ble Members. That was the helpful way in which he was helping us. Yesterday when I moved the introduction motion I stated that the Clauses that went to the Select Committee in main were thisto divide in such and such a form. The Clauses that have come back from the Select Committee with a majority report to this form and I charactarise that change of form of the main Clauses as not only a matter of compromise but a matter of abject surrender. I am not using so, Sir, in any ironical sense. A reading of the Hon'ble Member's objection to the amending Bill being considered and read in Council I took pains to state that it is correct this morning. I find all the objections mentioned by him, that is the change of form that he said may be considered by Government in a better line. All these changes were accepted by the Select Committee and the Select Committee report and the re-drafted Bill is the form that we wanted to take at the time of the introduction. You may verify. If the book is not there I will pass on my book. Look at the attitude of the Select Committee. The Select Committee accepted the position of the Government because that is the way in which the Chairman of the Select Committee was believing on behalf of the tenant. I am prepared to say that, Sir, that of course taking orders from Government at appropriate moments or at least knowing their minds by his clever ways known to him. That was the helpful way in which he was working. We, as a matter of compromise should be more charitable we accepted this position. What for? To see that this Bill the moment that it brought here even inclusive of the help of the Jenmies be passed into law and in consonance with the promise held out or the helpful suggestion made by the Hon'ble Member for Law in 1118. If this united request by the representative of the people is the thing that is to go before His Highness for getting the Royal assent, we have reason, Sir, as the Hon'ble Member for Law has also reasons to make, it was in that spirit that Select Committee worked and reported upon the Bill and that will be the fate of the Bill I know of accepting this question. If this Clause goes, Clause 22 necessarily goes. Therefore Sir, when the, Select Committee in that attitude took up that position with the co-operation mainly of the Hon'ble Member for Law and when the majorty as noted in the report said that retrospective effect proposed there to Clause 2 need not be there. That is what the Select Committee said. This Clause is very significant. After devoting one full closely printed page and more in dealing with the other Clauses and givin out cogent, telling reasons why the Select Committee adopted that attitude, mark you, Sir, when they come to Clause 2 of the Bill it had provided for retrospective operation from 19th Kumbham 1118. The next sentence is the sentence, "the Committee think that retrospective operation need not be extended to this Bill" Consistently with what we see on the other page, have we not got a right, has not this Hon'ble House got a right which sent this draft Bill for the consideration of the Select Committee? I seriously ask, has not this House got the right to expect from the Select Committee the reason why they say that retrospective effect should not be given, more especially in this case where they have given conclusions upon every other Clause. That refers to the significance. I referred to the significance yesterday and said that I would dilate upon it later. The very fact that the Select Committee does not give ressons for its conclusion, namely that retrospective effect need not be given, the very fact that there is no reason given I am entitled upon that to presume that with the cumulative intelligence of the members of the Select Committee, they were not able to give out one solid valid reason to show that retrospective operation need not be given. What else is the significance of the absence of reason in contradistinction to the very able reasons given to the other Clauses. That is the question that I put. I presume Sir, and I am sure that the Hon'ble friends who are in their seats will presume, will be justified in presuming that there are no reasons to show that retrospective effect should not be given, to this Bill. Now, I was on the point, Sir, of their opposition to the condonation Clause, because this amendment refers to matters connceted with condonation. That attitude at the time of the introduction in the original Bill of an identical Clause was excusable then, the cause being ourselves as stated earlier. Now, it is not excusable, it is unpardonable. Now to what they passed, *viz* the introduction of the provisions of section III of the Transfer of Property Act, not of British India but of Cochin being incorporated in the place of the other portions is the thing which I wanted under that amendment. Now the Select Committee do not consider, that Select Committee presided over as it was by the representative of the Government which had such-and-such commitments at the other stages of the original Bill and at later moments presided over as it was by such a representative of Government, when that Select Committee reports for the incorporation of the very thing that he opposed at that time, what does it mean, Sir? After

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the lapse of nearly 12 months and more the Government have realised that the attitude taken up by them at that time is wrong. I do not blame them again for taking up that attitude then because the state of attitude as evinced in the report must be due to various facts which had come to their notice and which in many cases had been brought to the notice, a good many of them through this House and a major portion through me and through other sources. They thought that unless we change our mind, the mind of the Government we shall reserve to be considered to be wooden. In their anxiety to do the right thing by the tenant without prejudicing the Jenmi they thought that the change of attitude is necessary, Now that change has come about on the part of the Government. I seriously ask what is the justification for this amendment unless it is by convincing reasons shown that this amendment if adopted is going to bring down the heavens upon the heads of these Jenmies. They must tell us, convince us that if this Clause is given retrospective effect, not to the period which was in the draft Bill but for very good reasons got further down, to this side to the date of the stage of introduction being asked for. What is your justification for opposing it, I ask? Although the Hon'ble Member for Law was trying to convince us by arguments, does the Hon'ble Member for Law in his heart of hearts feel that he has given out convincing arguments. We have seen the Hon'ble Member for Law giving us very convincing arguments from which very soon he escapes. He is capable of that end and he has evinced that attitude, shown that, converted us on former occasions. But does the Hon'ble Member for Law seriously think that he has advanced such arguments? Are we here on this side, Sir, such as to be carried away by those arguments. Have you give out a convincing argument? I was rather amused to hear the Hon'ble Member for Law saying that a statute should not have retrospective effect. I do admit that the canon law rule is that no statute should have retrospective effect. But does that great commentator Maxwell say that in no case should a statute have retrospective effect. Certainly not. No jurist will say, not even a poor pleader like me will say that. Authorities there are to say that no statute or rule should have retrospective effect. There will not be such fools. Therefore, although the rule, the normal rule is that no statute should have retrospective effect, there are exceptions and exception from the very nature of the word are provisions to be made contary to the general rule because of particular circumstances. And how can that be provided? They can be provided only in one way by express words being used in the enactment itself. They can be achieved in another way, namely that such effect following as a necessary consequence by a reading of the statute as a whole. Therefore it was helpful to me, Sir, when the Hon'ble Member for Law was saying that a statute can have retrospective effect only if the statute expressly provides it. What else is the attempt made? To expressely provide for retrospective effect being given to this without leaving it to the mercy and the trouble of courts, because they have to interpret. In-stead of troubling them, throwing in the vast field of interpretation of statutes, without putting them to that necessity, the amendment is an attempt at providing by express words as contemplated by jurists. Great writers on the interpretation of statutes have stated in express words that this can be achieved only by provision being made by express words in the statute or when the statute read as a whole necessarily leading them on to the conclusion that retrospective effect was intended, or rather that it was the intention of the Legislature to give retrospective operation as a whole or in a limited fashion. You have no escape from that. Therefore, Sir, when an attempt is made expressely providing for retrospective effect being given, for that reason you should not oppose. For expressely providing for such retrospective effect being given, there must be exceptional circumstances. Let us examine whether there are exceptional circumstances for giving retrospective effect limited. I have stated, Sir, in my dissenting note—"I am therefore emphatically of opinion that clause (2) of the Bill should be retained." I did not stop short there because my mind was working and had not decided whether I should insist upon the whole clause going as it is, that is giving retrospective effect back to 1118, whether something other than that should be incorporated. "If necessary with certain equitable limitation". So, in my dissenting minute which I was constrained to make because of the majority report rejecting this Clause without giving reasons, for the reason of having no reason in support of their argument, I was constrained to write this dissenting minute. It is only in implementation of the last portion of the dissenting minute that I have tabled this. Now, instead of having retrospective effect for the Bill as originally drafted and embodied in Clause 2 which went to the Select Committee I have limited its scope consistently with this portion of my note. I have reduced it both in point of time as in point of the field to be covered by it, in point of time reducing it from 19th Kumbham 1118 to 30th

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Makaram 1119 for the reason that it was the date on which leave to introduce this Bill was sought and widely known both by the tenantry and a certain class of jenmies. Therefore, I have reduced the scope of the point of time from the all-embracing nature of the original Clause, that is, for all the provisions in the draft Bill, but by reducing it to particular classes of cases, namely cases coming under clauses 8 (2) (*c*) and (*d*). (*c*) cases cannot exist hereafter unless it be in the case of exceptionally good jenmies, parental jenmies, they exist in Cochin, a few, unless in the case of old arrears prior to the enactment will have been some how or other collected either by eviction or by other means. Because of the lapse of time (*c*) will not, hereafter arise. Although clauses (*c*) and (*d*) are put (*d*) cases alone will arise.

As pointed out, I have a purpose and I am within my limits in giving you fanciful arguments and showing the hollowness of the arguments of the other side. Therefore, if I am allowed to speak without disturbance I may be in the miserable predicament to stock very soon. Otherwise I can proceed. Now I was on this. I have reduced the scope of the retrospective effect both in point of time as well as in its range. I have reduced it to particularly cases of eviction arising because nothing will arise under clause (*d*) on account of the non-payment of dues in time or within the extended time. There is no extension of time according to the Select Committee's report. That is an important heavy price that we have paid for this condonation Clause being incorporated in the re-drafted Bill. Therefore in the matter of range of retrospective effect, they will affect only suits in eviction filed subsequent to 30th Makaram 1119 and if this is passed, to the other will come. Then a reading of the amendment consequentially following from this will show that it is not for all suits filed subsequent to 30th Makaram 1119 that I seek to have retrospective effect through this amendment. All those suits which have ended in decrees and also have gone to the final stage of eviction by jenmy or surrender by the tenant, there is no question of re-opening such cases which have been finished or the final stages have been reached, or the surrender has been effected, or the merciless jenmi has pounced upon the tenant and his life's worth has been taken, in such cases I do not want retrospective effect. Such matters will not be re-opened. But I insist through this amendment that as far as cases pending, whether in the original court or in the appellate court, this provision may apply. Although there is some redundancy by way of abundant caution, I move this.

മിസ്റ്റർ കെ. എസ്സ്. പണിക്കർ : ഇപ്പോഴും യാതൊരു കേസ്സ് പൊൻഡിങ്ങുണ്ടോ ?

മിസ്റ്റർ പി കുമാരൻ എഴുത്തച്ഛൻ : പറയാം. അതൊക്കെ എന്റെ കയ്യിലുണ്ട്.

I was on this point namely that suits which not only ended in decrees but eviction completed are not to be re-opened. There is no harm in the Clause being provided for that as we have provided in the Agriculturists Relief Act. There are provisions for reopening sales even in cases where consequent upon the sale possession has been taken, improvement has been effected, possession has changed to third parties. For all these there are provisions in the Agriculturists Relief Act. I would very well introduce that, but I have got my brother jenmies—by brother jenmies, I do not mean. I am a jenmi believer, as I am in Hinduism.

Mr. A. V. Moothedan (*Chalakkudi*) : Do you believe in Hinduism ?

Mr. P. Kumaran Ezhuthassan (*Vadakkancheri*) : That apart. I do not want provisions for re-opening such cases as rightly made in the Agriculturists Relief Act. I have left that out of account. Some indescribable class of jenmies in contradistinction to the other classes, if they have succeeded, I do not want to distrub. Therefore, I have reduced the scope of the retrospective effect.

Mr. M. Sivarama Menon (*Advocate-General*) : I raise a point of order. In view of the frank confession made by the Hon'ble Member for Vadakkancheri that in so eulogizing his speech he has got certain ulterior purposes. I request the Chair to exercise his power. Under S.O. 23 the mover of an amendment has not got the right of reply by statute, except with the permission of the Chair and it is the right and duty of the President to curtail the speech if he is likely to abuse that concession.

Mr. Deputy President : The mover of an amendment has no right of reply unless it has been allowed by the Chair. But here it was allowed.

Mr. C. V. Iyyu (*Kunnamkulam*) : The President allowed it and he has begun his speech. There is no provision that the President can stop him at any time. If the President thought it not right he ought not have allowed it.

Mr. M. Sivarama Menon (*Advocate-General*) : I only said that a reasonable time may be fixed. If it is the intention of the Hon'ble Member to stifle the progress of any other Bill that is before the House, consistently with the duties of the Hon'ble President, the President has got the

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right to control the speaker in the exercise of his privilege. The fact that once he has been allowed to reply does not mean that he can go on till 5 O'clock.

Mr. C. V. Iyyu *(Kunnamkulam):* You cannot ascribe such a motive to him.

Mr. M. Sivarama Menon *(Advocate-General):* But he has confessed. No Member can be allowed to abuse his right of speech.

Mr. Deputy President : That must be left to the discretion of the Chair.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Regarding the point of order, Sir, perhaps it may be a case of the Standing Orders not providing a right of reply to the mover. But there is a convention established in the Assemblies all over the world that in discussion of course discussion means speeches, in discussing legislation there is absolutely no time-limit, thereby let me be not misunderstood as meaning that the Hon'ble President in his powers of controlling the debate and getting on with the work of the House as provided in the genearl clause, let me be not misunderstood that the President is powerless the spirit of the general rule is that there is no time-limit in matters of legislation. In matters Hon'ble Members will stand the strain not only for hours but for days together. The thing is, Sir, there was an observation not deliberately made by my Hon'ble friend the Hon'ble Member for Law that there was a confession on my part in prolonging my speech, I had some purpose. When it was tauntingly put from that corner I said that that may also be taken as a reason. But that is not a confession. Should we not have a new dictionary to take that expression as meaning confession.

Mr. Deputy President : The Hon'ble Member has already taken nearly an hour. How much time more do you require ? I will give you 5 minutes more.

Mr. C. V. Iyyu *(Kunnamkulam):* In democratic countries like America, where constitutional system of Government had been working for a long time, there is a policy of using the privilege of Philibester. The Hon'ble Member for Vadakkancheri can have his tea, coffee, etc., standing and continue his speech.

Mr. P. Kumaran Ezhuthassan *(Vadakkaneheri):* That was done in the Assembly by Sir James Grigg while introducing the Finance Bill.

Mr.C. V. Iyyu *(Kunnamkulam) :* I request that the Hon'ble President would not be pleased to stop his speech. That will be curtailing the privileges of the House on this side. The Hon'ble Member for Vadakkancheri who was advocating the dissolution of this Council went out of his way in requesting the Hon'ble President to extend the sitting by one day for the discussion of this Bill.

Mr. Deputy President : Even in introducing a Bill though there is no time-limit the Chair can stop the speech whenever he finds that there are unnecessary repetitions or irrelevant talk.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* But there is a big "if".

Mr. Deputy President : I will give the Hon'ble Member 5 more minutes.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* I am obliged to the Hon'ble Chair for giving me the direction. I shall try to answer the curious argument of the Hon'ble Member for Law and then wind up. I shall not repeat, I shall advance one single irrelevant matter. It is not for the words emanating from the Hon'ble Advocate-General that I have to answer, but I have to reply to the purpose of his argument, and it is my duty, Sir, a duty that I owe to this House as also to the tenantry that I should expose the hollowness of the argument of the Hon'ble Advocate-General in opposing this amendment. I stated that both in point of time and in point of the range, I have come down in the amendment. Therefore the attitude of the Government which has now, according to the Select Committee Report, incorporated the provision of the Transfer of Property Act in place of the unseemly paragraph taking away the discretion from the Court as the Bill now stands, in the face of their having accepted that position, in opposing this is most objectionable. My prayer is that they may reconsider the position. Why not come to our help ? You have come to our help before, and I am sure you will continue to do so in future. What is the opposition for this innocent amendment ? Retrospective effect can be given in exceptional cases. The Hon'ble Member for Mukundapuram Ezhuvas has been asking me whether I have got statistics. In reply to question No. 70 put by me answered in the last Budget Session, the figures have been given. In the short period from Vrischigam to 30th Edavam, how many suits in eviction have been filed was the question and figures have been given. To the question as to how many have been decreed and how many were pending,etc., a statement had been placed on the Council Table and I took a copy of that and it shows that very many suits were of the kind that I mentioned, suit being for collection of arrears of paltry sums of puravakas or a paltry balance of a few paras of paddy, in cases where 200 paras of paddy was the pattam, a

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balance of 5 paras. From my personal experience as a lawyer in my Court I am speaking. My Court means the Court at which I have the honour to practice. That statement, a copy of which I have got, shows that many such suits were filed within that short period, Sir. I have got figures. You may verify. A large number of suits have been filed. What does it show? That class of jenmies were trying to kill the tenants. So the incorporation of this condonation clause is to dissuade him without prejudice, as pointed out by my Hon'ble friend Mr. Poulse. He gives his dues, as I originally mentioned. The only thing is he is dispossessed of the weapon which he can have under the existing statue, unnecessarily retained in spite of our attempts at that time not to have it. That weapon must be taken away without prejudice to him is my object.

With one more observation, I shall conclude. It was stated that it was doubtful whether clause 4 as it stands will give relief, unnecessarily giving a handle to the Hon'ble Advocate-General by arguments from this side. It is to aovid such things that I have now moved this amendment. I am not going to leave this position in the regions of interpretation, right or wrong, by Courts of our State. I want express provision, the better of the two methods of giving retrospective effect. That is the point of the amendment that I place before the Council, before this Hon'ble House for a correct voting. In the name of the tenantry, in the name of the people of the State, in the name of their duties towards the people, in the name of atonement for their mistake that they committed at the time of the introduction of the Bill when I moved my amendment No. 53, in the name of all these, I make an appeal to all, to the jenmies and the jenmi-minded inclusive, I make an appeal to them to support this amendment and expose the hollowness of the opposition of the Government. I have done, Sir, and I am thankful for your indulgence.

Motion put and lost

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Poll, Sir.

AYES

Messrs.
1. B. M. Peter.
2. K. R. Achuthan.
3. C. V. Iyyu.
4. Ephraim Ouseph.
5. K. T. Achuthan.
6. K. S. Panickar.
7. T. P. Poulose.
8. P. Narayana Menon.
9. L. M. Pylee
10. George Panikulam.
11. K. M. Ibrahim.
12. P. Kumaran Ezhuthassan.
13. M. Krishna Menon.
14. K. Kunhirama Menon.
15. K. Narayana Menon.

NOES

1. Mrs. A. N. Menon.

Messrs.
2. A. Eachara Menon.
3. Chittur Kunhan Nambudiripad.
4. A. B. Salem.
5. N. Govinda Pai.
6. Shabdai S. Koder.
7. N. V. Subbarayan Chettiar
8. P. K. Krishnan.
9. Rama Varmha Tampuran.
10. A. Madhava Prabhu.
11. Rao Sahib I. N. Menon.
12. V. K. Aravindaksha Menon.
13. P. V. Raphael.
14. Rao Sahib Dr. T. Varghese.
15. M. Sivarama Menon.
16. B. V. K. Menon.
17. C. J. Mathew.
18. Khan Sahib Y. Mohamed Roshan
19. Rao Sahib M. M. Paul.
20. S. Venkiteswaran.

Motion lost, 15 for and 20 against

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Neutrals may kindly be counted, Sir.

Mr. Deputy President: That is not being done.

*Mr. K. Narayana Menon** *(Mulakunnathukavu):* Sir, there is some difference between my amendment and the amendment moved by the Hon'ble Member for Vadakkancheri. My amendment does not relate to the whole Act that is one difference. The other is that is restricted to the provisions of section 8 clause 2 (*c*) or (*d*).

*Speech not corrected by the Hon'ble Member.

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Mr. M. Sivarama Menon *(Advocate-General):* The only provision affected by the amendment of the Hon'ble Member, Ezhuthassan is clause 8. Insteed of passing a decree if the tenant deposits the pattam with interest, etc., that may be accepted. That is the only provision to which this amendment is applicable. Mr. Narayana Menon's amendment specifically says that retrospective effect shall be given to this particular clause.

Mr. Deputy President: Mr. Narayana Menon's amendment is more restricted and has got a narrower scope.

Mr. M. Sivarama Menon *(Advocate-General):* In saying that retrospective effect should be given Mr. Ezhuthassan's amendment does not refer to any particular section but the only section to which the amendment is applicable is Section 8 which says that instead of passing a decree for non-payment of pattam if the tenant goes to the court and deposits the cost and arrears, the court may condone the forfeiture, that is the provision contained in Clause 8 (2). Therefore by simply saying that the provisions of this Act shall be given retrospetive effect the only provision to which it relates is the provision referred to by Mr. Narayana Menon. Therefore both the amendments are identical.

Mr. C. V. Iyyu *(Kunnamkulam):* Supposing the amendment to have retrospective effect to the whole Act has been moved and carried, there is no use of carrying Mr. Narayana Menon's amendment. As it is not done the better method would be to allow his amendment to be discussed as it has got only restricted scope.

Mr. M. Sivarama Menon *(Advocate-General):* The amendment of Mr. Ezhuthassan can have application to section 8 only. Mr. Narayana Menon's amendment specifically refers to section 8. Mr. Ezhuthassan's amendment instead of specifying the section says that the whole Act shall have retrospective effect. But in both the cases one and the same section is affected and so both the amendments are identical.

*__Mr. K. Narayana Menon__ *(Mulakunnathukavu):* The position that I take up is this. I will illustrate my position with an example, as is seen from the Verumpattamdars' Amendment Bill as reported by the Select Committee. There is a clause there clause 4 to which I referred while seconding the Motion. That reads "Provided that where the pattam unpaid represents only the Puravaka dues or the value thereof payable by the verumpattamdar, the lessor shall be entitled only to sue for the recovery of such dues or value and not for the eviction of the verumpattamdar from his holding." Mr. Ezhuthassan's amendment certainly affects this clause as well. Suppose there is something payable in kind and that payable on some date within 30th Makaram 1119 and later days, it will come within that portion and thereby enable the tenant to pay that irrespective of the provision of the older Act, whereas my amendment clearly and unambiguously says that it shall affect only the question regarding forfeiture, *i. e.*, under Section 8 (2) (c) or (*d*).

Mr. T. P. Poulose *(Kanayannur):* This also comes under clause (c).

Mr. K. Narayana Menon *(Mulakunnathukavu):* Therefore what follows? Let it come under that. I am not concerned with Puravaka dues. I do not want retrospective effect for the payment of Puravaka dues, commutation or non-payment or whatever else. My amendment does not contemplate the cause of the forfeiture but only the effect of the forfeiture. If there is a forfeiture of any account under the Verumpattamdars' Act there is a clause in the amendment giving them a right of relief from forfeiture. I ask by my amendment only to give retrospective effect to that specific section only irrespective of whatever may be the retrospective effect as regards others. Unless I move my amendment and put it to the sense of the House it will not be possible for the House to express an opinion on the limited scope of my amendment.

Mr. Deputy President: The Hon'ble the Advocate-General's point is that both the amendments are identical in effect. Is there any difference between the amendments in effect that is the question.

Mr. K. Narayana Menon *(Mulakunnathukavu):* The question is whether by an analysis of these things and by driving it to the logical conclusion in that view this section 8 (2) (c) or (*d*) must come merged in clause 8 because under section 8 the possibilities of forfeiture that are contemplated and which are sought to be relieved against under the Transfer of Property Act which are now sought to be incorporated in the Act, are these provisions contained in clauses (c) or (*d*). There are any number of clauses also from which forfeiture has to be prevented. The Act does not seek to give any relief in such cases. That is why I submit that there are any number of clauses under which forfeiture of tenancy is effected but the only cases where forfeiture is sought to be relieved against are under 8 (2) (c) or (*d*).

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* Speech not corrected by the Hon'ble Member.

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Mr. M. Sivarama Menon *(Advocate-General)* : I shall read the clauses (c) and (d).

Clause (c) says: "that he has not paid the pattam due in respect of the holding or the revenue, cess, tax or special charges, if any, specified in section 6 within three months of the due date as provided in the contract of tenancy or where no date is fixed in the contract, within three months from the due date specified in section 38 of the Cochin Tenancy Act, XV of 1113;"

Clause (d) is: "that he has not paid within six months from the commencement of this Act the entire arrears of pattam, if any, due in respect of the holding at the commencement of this Act."

Mr. K. Narayana Menon *(Mulakunnathukavu)*: That is exactly why I insist that I must move the amendment. Though the previous amendment has been moved and a speech was made for over an hour and a half, I could not make out to what extent the retrospective effect should operate and to what all sections—I was not able to know which all provisions are sought to be relieved against and that is the reason why I want to move the amendment. When we are in a wilderness, and when we have to be guided by the vote of the House, it is my duty to submit to the House the facts and to make the House understand what the position is. It is not the length of the speech or the length of the argument that counts.

Mr. Deputy President: Is it your position that the amendment tabled and argued upon till now is most unintelligible to any ordinary man?

Mr. K. Narayana Menon *(Mulakunnathukavu)*: Sir, the clause is clear, but the point about its application and extent of scope is not clear. The first position that was taken was that they must be guarded against forfeiture. That was the main point. Further the position was that suits were filed, may not be filed or may be filed, and that retrospective effect should be given. Then we went back to the days when we were discussing the provisions of the Verumpattamdars Act. Those facts were stressed and placed before the House. The position that I take up is not that. That is, my position is not that the clause should have retrospective effect in respect to all the sections, but only to the particular section specified there.

Mr. Deputy President: If your amendment is accepted, will there be sections left out which were sought to be covered by the previous amendment?

Mr. M. Sivarama Menon *(Advocate-General)*: No, Sir.

Mr. K. Narayana Menon *(Mulakunnathukavu)*: I do not follow, Sir.

Mr. Deputy President: The first amendment govern so many cases. All those cases may not be governed by your amendment. Is it not that the position?

Mr. M. Sivarama Menon *(Advocate-General)*: No, Sir. Both the amendments will affect only one section.

Mr. C. V. Iyyu *(Kunnamkulam)*: With due respect and reverence to the Hon'ble Chair, I may be allowed to submit that the Chair need not very much mind about the effect in the decision. I most respectfully submit that the Chair ought to be very-liberal, especially in this case, without stiflying the right of speech of the Members.

Mr. K. Narayana Menon *(Mulakunnathukavu)*: Not that I want to interfere with the ruling of the Chair, all that I want to submit that this is a more appropriate and proper amendment and I could have even persuaded my Hon'ble friend to withdraw his amendment.

Mr. Deputy President: It was voted upon and lost.

Mr. K. Narayana Menon *(Mulakunnathukavu)*: If my amendment is ruled out, the result will be that the appropriate effect that is sought to be given by them is not available.

Mr. Deputy President: Since both the amendments are identical in effect, I rule that this cannot be taken up now.

Clause 2 put and carried

Clause 3 put and carried

Clause 4

*Mr. K. Narayana Menon *(Mulakunnathukavu)*: Sir, I beg to move that in clause 4 for the word "may" occurring between "court" and "if" substitute the word "shall", and in the same clause, delete the words "his full" between the words "and" and "costs", and also delete the words "in lieu of making a decree for eviction". I am fully aware that the amended clause that appears in this Act is a true copy of a like section in the Transfer of Property Act and I

*Speech not corrected by the Hon'ble Member.

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also anticipate or rather I could read from the comments that have already been made in regard to a previous amendment by the Hon'ble Member for Law that it is because we entertain a sort of distrust in the judiciary or that we are not inclined to leave the discretion to the Court by having a peremptory condition by the word shall that this is introduced. My object, Sir, was not to condemn the Courts or to dictate to the Court, and much less due to any distrust, but to make it explicit as it was once explicit in the Verumpattamdars Act with reference to another section. In regard to suits for eviction the provision that was contained in the original Act was that the Court shall decree eviction. There was no may or discretion there, but it was peremptory that if there was a default, the Court must order eviction, and therefore I was only following closely the words of the master when I copied the word "shall" instead of the word "may."

As regards the other portion of the amendment, I submit that in view of the scope of the section as is sought to be amended, the remaining portions are more flowery language and less of substance. I thought that we can have a shorter and a less voluminous clause in the place of the larger one that is in this to the same effect for all practical purposes. The clause as it now stands reads thus: "when a verumpattamdar is sought to be evicted on the ground specified in clause (c) or (d) of sub-section (1) the Court may, if at the hearing of the suit the verumpattamdar pays or tenders to the lessor the pattam in arrear together with interest thereon and his full costs of the suit or gives such security as the court thinks sufficient for making such payment within fifteen days, in lieu of making a decree for eviction pass an order relieving the verumpattamdar against the forfeiture and thereupon the verumpattamdar shall hold the property leased as if the forfeiture had not occurred". Therefore, Sir, in substance by the amendment that I seek, the word may, though it has been held more than once that it practically mean shall, may be replaced by shall, and I am inclined that shall would be better, not of course with any scepticism in my mind that a discretion in that is not called for.....

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* It is not safe.

Mr. K. Narayana Menon *(Mulakunnathukavu):* Apart from the question of safety, it is not necessary, that is my position.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* I will oppose it.

Mr. K. Narayana Menon *(Mulakunnathukavu):* You may oppose, but my position is this that when we say that on the tenant performing such and such duties as are contemplated by the section, he is entitled to relief from forfeiture, there is no further necessity to leave it to the discretion of the Court in suits pending. In other words when imperative provisions are going to be applied to certain sections, there is absolutely no chance for further discretion. That is the basis on which I would like to have the word may changed into shall. I have read in certain commentaries that "may" generally means may not. There is nothing wrong about it. Even in parliamentary procedure it is so. There was a quibble upon the same matter some two days ago in the Legislative Assembly and even that may not be the last word upon the subject. So that, there is nothing wrong in my illustrating my position by saying that "may" after all may mean "may not". The discretion if given is open to abuse. I am not sceptic about the Courts or their powers, nor have I the inclination to do so, but apart from it, if the word there is "shall" there will be no further cause for trouble.

The other portion of the section which I want to omit is "his full costs" of the suit. Those words also do not seem to be necessary, because the cost of the suit will be sufficient. The next is to omit the words "in lieu of making a decree for eviction".

The Hon'ble President took the Chair at this stage

The argument is that the relief from forfeiture granted to the tenant comes as his right on the deposit of the amounts that are contemplated by this amended clause or furnishing security therefor. I submit that there is no difference between the original clause of the Bill and the present amendment in spirit though there is an apparent difference in words. I do not think there is any ground on which this amendment may probably be opposed by anybody. The fact that this is not a true copy of the like section in the Transfer of Property Act is not a ground to oppose it. It was an enactment and it is an enactment which contemplates various other changes in the matter of leases whereas the Verumpattamdars Act does not take in any of the various kind of leases that are contemplated by the Transfer of Property Act. Therefore in substance the only tenure that is sought to be relieved against forfeiture is the verumpattam tenure and none else and therefore I submit that the provisions of this Act has tabled in the amendment will be sufficiently

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helpful and useful instead of the old provisions of the Transfer of Property Act section, however, we may revere that and say that it has got the power of the greatness of antiquity and therefore claims respect. I respectfully submit the amendment for the kind acceptance of the House.

*Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: Sir, In seconding this most useful amendment, I beg to state before this Hon'ble House that it is our experience of very many things taking place in Cochin, Sir, that has compelled the Hon'ble Member for Mulankunnathukavu as also my humble self to table this mono-syllabic amendment, changing the word "may" into "shall". "May" has often been interpreted to mean "shall" and "shall" has more often been interpreted to mean "may." That is one of the common canons of interpretation of statutes. A recent instance of that was seen, Sir, the mischief of that interpretation being sought again by my poor self through another amending Act which cannot unfortunately be moved to-day. There is a word, Sir, in section 24 of the existing Agriculturists Relief Act, that if application either by the judgment-debtor or by the decree-holder is made within 90 days, the Court shall scale down the decree, it is necessary that we understand the true import, if the judgment-debtor or decree-holder applies within a period of 90 days, the Court may scale down the decree under the provisions of Chapter II of the Act relating to sections 7 and 8 of the Agriculturists Relief Act; that "may" was interpreted by the highest tribunal in the State as pure "may." In a case reported in 6 Cochin Law Journal in these words the interpretation comes:.....the words in section 24 which appears in the procedural and miscellaneous chapter cannot be allowed to control section 7 appearing in Chapter II, which gives the substantive right of scaling down of the debt. That is the essence of the decision. In that decision the highest tribunal interpreted the word "may" as "may" and rightly as "may." One or two years tolled by, we came to 10 Cochin Law Journal case and that may has been by a full bench decision interpreted to mean shall, or in other words, whatever "may" be the relief granted under the Agriculturists Relief Act, again an enactment passed by the Government in record time to stand by the agriculturists, if the rule of 90 days mentioned in section 24 with the word "may" is not followed, what is granted under the substantive section, clause 7, isn ot to be had, is denied. That is why I have stated in the other amending Act by the interpretation on section 24 embodied in 10 Cochin Law Journal 343 case, what has been granted under the Agriculturists Relief Act to the Agriculturist-debtors by the Act has been denied to them. Hence the necessity for the removal of the words "within 90 days". Unfortunately it is not reached. These are local instances of recent occurrance of "may" being once interpreted as "may", and after one or two years, that identical "may" being interpreted as "shall". The dissenting minute shows the necessity for this amendment and is further accentuated by a recent decision of the High Court, a full bench decision again, upholding their earlier decision, when they interpreted the pure "may" as "shall", although they had on an earlier occasion interpreted "may" as a pure "may" as they ought to. With eyes open, with such things taking place, when laws are allowed to be interpreted and expounded only and not made specific, we cannot but move this amendment. And we are taking this occasion to see, Sir, that what is proposed by the condonation clause, accepted and reported by the Select Committee and now being considered by the House that on deposit of arrears of pattam, costs and interest on a particular date, on that deposit being made, the Court should give the relief consistently with the spirit of the Verumpattamdars Act, it should be a definite case of relief being granted, and there should be no place for discretion being given to the Court or the Court being allowed to interpret the enactment as vesting in them the discretion. With our said experience, Sir, which have created misery unto many an Agriculturist-debtor, with that experience, Sir, is it safe, is it pardonable on our part if we sit by and say that the word "may" will always be interpreted as "shall", with this experience I ask, I seriously as the Hon'ble the Law Member, I am referring to the disposal of 10 Cochin Law Journal case, second appeal No. 23 recently disposed of by our High Court by a full bench, with that experience, should not the idea of an amendment which is moved only by way of abundant caution, should it not be accepted, and for the Government to accept, should we not advance arguments, arguments of the type that will convince even our Government, that is the attempt, Sir. Now, Sir, unless that word "may" is substituted by the word "shall", the predicament in which the verumpattam tenant will find himself —a matter taken to the High Court—cannot be described no w It may possibly be interpreted as "may", but it is very doubtful that it shall be interpreted as "shall". I am not going to say what is going to happen. But the point is, why give room for doubt? Make it explicit. Just as you have said in the existing Act, in clause 8(2) eviction shall be ordered, let it be said in the Amending

* Speech not corrected by the Hon'ble Member.

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Act also, that condonation shall be granted on the condition that the deposit is made within the time. That is the object, Sir, of this amendment. I do not think, Sir, that any further comment upon this is necessary. Therefore, I leave it for the dispassionate consideration of the House, where I hope Hon'ble Members who can expound law better will take part and better than them, the laymen who know the best of laws.

Mr. C. V. Iyyu *(Kunnamkulam):* Sir, I have only to add a few words. This morning, the Hon'ble the Law Member seem to have hinted that some of the Members of this House seem to have no confidence in the Courts and so they have brought this amendment. The Advocates practising in Courts will have more confidence in Courts than ordinary laymen like me.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* They have necessarily to.

Mr. C. V. Iyyu *(Vadakkancheri):* Of course we have confidence in our Courts but when the original Verumpattamdars' Bill was moved the Government seems to have suspected their own Courts instead of putting the word "may" in the condonation section and leaving it for the discretion of the Court they said that the word "shall" may be substituted. If my memory is correct I think the Hon'ble Member for Law moved an amendment that the "shall" be substituted because if the word "may" is there the Court would in certain case give condonation and the discretion many of our Courts would have exercised properly in favour of the tenants of the landlords as the case may be and the Government themselves paved the way for this amendment. So this does not mean any disrespect to any Court of Law. It is not in that spirit that the Hon'ble Member for Mulakunnathukavu has brought this amendment. With these few words I support, the motion of the Hon'ble Member for Mulankunnathukavu.

Mr. K. T. Achyuthan *(Ezhuvas-Talappalli):* I also support this amendment. Though it may seem that from the spirit of the Legislation the Court may exercise its discretion it is not the safety of a large number of tenants as a whole when certain particular case comes up for trial the other party I mean the landlord or the plaintiff may aduce evidence, a large amount of evidence which may bring to the Court to come to the conclusion that in that particular case there is now necessity for condonation. When such circumstances arise as has been expressed here the Court may be inclined not to condone the case. So in order to avoid all these difficulties and to make sure of the position of the tenants even though they have not paid the pattan in due time and when the matter has been taken to Court he can be sure on that ground, he can think that if he deposits the prescribed amount his default will be condoned, his right will be there, he will not be evicted and he can raise the amount in peace. So to avoid all competitions and complications this particular clause must be clear from ambiquity. The Law may be laid down in clear expressions. So it is very necessary that as far as possible in cases where the intention of the Legislature is that the Court must condone, I don't think, there will be any objection from any corner. I strongly support that amendment.

Mr. M. Sivarama Menon *(Advocate-General):* This amendment really consists of three parts. The first is for the word "may" substitute the word "shall". The Government have no objection in accepting this though not for the reasons stated by the Hon'ble Members but for the solitary reason given by the Hon'ble Member for Talappally Ezhuvas namely that if the word "shall" is there the tenant who has not got the money with him will have an assurance that if he raises the money the condonation will be extended to him. It is not the intention of the Government to stifle the right that is conferred by the Act. But the Select Committee thought that they could with courage and satisfaction adopt the language in the Transfer of Property Act. Section 111 of the Transfer of Property Act uses the same language and the language of that Section again has been adopted from the corresponding section in the British Indian Transfer of Property Act. We thougt that the language that has been adopted for the whole of British India and Cochin in the Transfer of Property Acts will do well for the Cochin Verumpattamdars Act also.

Then with regard to the second part of the amendment, *i. e.*, to omit the word "his full" from the term "his full costs". I object to that because the Section says that if the arrears of pattam together with interests thereon and his full costs are deposited there shall be a condonation. And it is sought to omit the words "his full". There are costs of institution, costs of processes, and several other costs. The full costs of the plaintiffs have to be paid-that is the condition upon which forfeiture will be condoned. Why should we take away, "his full" ?

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Costs mean full costs.

Mr. M. Sivarama Menon *(Advocate-General):* Why should you then omit "his full" ?

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* It is reduntant.

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Mr. M. Sivarama Menon *(Advocate-General)*: The words "his full costs" must be there. It is a sort of direction to the Court that there is no discretion to reduce any costs but that the Court is competent to condone only on payment of arrears, interest and full costs.

And the third amendment is that the words "in lieu of making a decree for eviction" may be omitted. That portion of the sentence is, practically speaking, an ornament to that sentence and for balancing the sentence, and from a legislative point of view it ought to be there. Even if that is omitted the meaning is not going to be changed. I do not fully realise why we should interfere with the language. There is some purpose also. Further the general law confers a right to sue for eviction. In such cases, the Court is, according to the principles of general law, bound to pass the decree for eviction. It is in lieu of this decree that it is asked to pass an order relieving the verumpattamdar against forfeiture. Therefore, it is practically in one sense necessary also. This is not also going to affect the interests of the tenants. From a legislative point of view and an abstract point of view, this is necessary and it will not be against the interests of the tenants. As far as possible the language of our Statutes should follow that of British India in such matters.

The amendment that the word "may" be replaced by the word "shall" was put and carried. The other two parts of the amendment were put and lost.

Clause 4 as amended, put and carried

Clause 5

Mr. M. Sivarama Menon *(Advocate-General)*: Sir, I beg to point out that the next amendment of Mr. Narayana Menon cannot be tabled now because the first amendment to give retrospective effect, *i. e.*, Clause 2 has been thrown out by the vote of the House to-day.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: That does not follow, Sir.

Mr. M. Sivarama Menon *(AdvocateGeneral)*: It has already been admitted that this Clause practically depends upon the Clause to give retrospective operation. Now that amendment has been thrown out there is no point in moving this amendment.

***Mr. K. Narayana Menon** *(Mulakkunnathukavu)*: I submit that this can be contemplated as having a substantive application to certain Sections after the Act comes into force. When suits are pending on the day on which the Act comes into force there is a probability and a possibility and a contemplation in that Clause to affect those suits when that Act comes into force. The question is whether we should accept it. My submission is that the Clause, with 30th Makaram 1119 will take away from that Clause the force of the Section that in a pending suit such and such a relief should be granted if applied within such and such a number of days. My submission is that because of the fact that the first Clause in the amendment to the Section has been thrown away that this also should not be considered, because there is the retrospective effect either to the pending suits or the suits filed after that or disposed of but not to the decreed suits provided that the Bill is not executed. But in this particular case when the Act comes into force there may be suits pending and it will not be difficult for this Legislature to say by this amendment that if a suit is pending on that day and if within such and such days and such and such things are done you will get the relief. If that is implied and if the Chair rules that it is in order I will advance my arguments.

Mr. M. Sivarama Menon *(Advocate-General)*: Sir, to explain, the position further I may say that this amending Bill if it becomes Law is to come into force on a particular date. The first amendment moved today was to give retrospective operation to Section 8 (2) or to any of the provisions relating to pending suits, that means, suits filed before and pending before the amending Bill was sought to be introduced. That amendment was thrown out. Therefore, if the opinion of the House is that the special provision contained in this amending Act can apply only to suits instituted after the coming into force of this Act, this amendment has no place. A tenant who has not paid current dues would forfeit his tenancy only if he does not pay within the three months time. Now suppose a case has been filed where is it stated that the tenant has not made the payment within three months and that the suit is pending. The effect of the amendment of Mr. Narayana Menon will be to give such a person a right to deposit the money within the number of days contemplated in this. That is exactly against the position voted for by the House in the amendment moved by Mr. Kumaran Ezhuthassan. Let us see what they

*Speech is not corrected by the Hon'ble Member.

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meant by this. It says "A lessee against whom a suit in eviction is pending may within thirty days of the passing of this Act or within 15 days of the hearing of the suit whichever is later apply for relief for forfeiture under the provisions of section 8 (2)." *i. e.*, the Court will not be bound to enforce forfeiture but the court according to the provisions of the Act may on deposit of the amount condone. I have already argued that cause of action arises on a date prior to the coming into force of the amending Act. And so the right vested would be divested by the amending Act unless and until there is a retrospective provision in the amending Act itself. The Hon'ble Member Mr. Narayana Menon as also the Hon'ble Member Mr. Kumaran Ezhuthassan has stated that this is a consequential amendment to Clause 2 and that amendment has been thrown out. So it will be seen that as a matter of fact my position is absolutely correct. The former amendment has already been voted against by the House and so this is not allowed by the rules.

Mr. President: I am quite convinced that the contention of the Advocate-General is correct and I cannot permit a discussion of this amendment.

Clause 5 put and carried

Clause 1 put and carried

Title and preamble put and carried

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* May I request the Hon'ble President that, suspending the Standing Order, the third reading of Bill may also be had now as was done when the original Bill was passed by this House. On that day the seconding reading was at 5 O' clock. After waiting for a few minutes we met and passed it at 5-15, and passed the Bill. This being a very important piece of legislation that procedure may be followed.

Mr. President: I may remind the Hon'ble Member that it is a very long time since we did such a thing.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* We have reached that stage when it may be brought nearer.

Mr. M. Sivarama Menon *(Advocate-General):* Sir, in spite of the fact that the Hon'ble Member for Mulakunnathukavu tried as far as possible to postpone the discussion of Mr. Eachara Menon's Bill.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* I refute that.

Mr. President: Order. Order.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* With your leave, Sir, I refute that statement of the Hon'ble Member.

Mr. M. Sivarama Menon *(Advocate-General):* In order to protect public interest or the interests of the tenants it is not at all necessary that the final stage of the Bill should be rushed through. There is a Standing Order and unless it is amended the procedure suggested cannot be followed. Why should we take such an extra-ordinary course. Is it on account of the apprehension that it will not become law. We had a full discussion and the Government have not tabled any amendment. My advice to the Government will be to accept the amending Bill. There are powers vested in the Government to bring into force this Bill. Some delay is inevitable. You cannot avoid it by rushing through the third reading.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* I may be allowed to make a statement.

Mr. President: One sentence.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* I am not accustomed to sum up the feelings in one sentence. I can finish it in two minutes.

Mr. President: Yes.

***Mr. P. Kumaran Ezhuthassan** *(Vadakkanchei)*; I submit that this can be done. In the first place because of precedence. We are suspending the Standing Order without amending it. We had that precedent and it is the Parliamentary procedure to follow precedent. The Hon'ble Member for Law said that it is on account of apprehension that it may not become law.

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Certainly. The suggestion is that it becomes law at the earliest opportunity. Retrospective effect can be given to amendments vehemently opposed and wrongly rejected. Unless the third reading is got through it cannot be submitted to His Highness. Without that being submitted the Royal Assent cannot be had and the earliest opportunity that we can have for the third reading is the first day of the Budget Session of Karkadagam, about four or five months hence. Hence the greatest need for doing this suspect the precedence of this House. Clause 2 becomes law and it comes into force at once. If it becomes law to-morrow suits can be filed day after to-morrow. If not the suits will have to wait till the Budget Session. That is the position.

Mr. C. V. Iyyu *(Kunnamkulam)*: Sir.....

Mr. President: I cannot allow any discussion. In view of what has been advanced by the Advocate-General I am quite satisfied that there is no need of suspending the Standing Order.

The Cochin Verumpattamdars Act (Amendment) Bill
(Mr. A. Eachara Menon)

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: By way of information I should like to know, what is the wording of the motion that was passed yesterday. That is because the Select Committee had reported for rejection of the Bill. It was by special leave of the Chair that the motion was made.

Mr. President: The Motion made was for the consideration of the Bill as it went to the Select Committee.

Mr. M. Sivarama Menon *(Advocate-General)*: Yesterday this House was considering all the aspects of the question in issue with regard to the question of conferring the right of eviction for self-cultivation. It passed a motion for consideration of the Bill and I held out an assurance to the House that on such a motion being passed Government will table amendments. The amendments have been placed on the table of the House to-day and copies circulated among all the Hon'ble Members during question time, and therefore I beg to move the amendments. Government can take appropriate action after the sense of the House is, at least informally, ascertained.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: That will be curious.

Mr. M. Sivarama Menon *(Advocate-General)*: The amendment proposes certain safeguards. In the case of a holding which has not been held by a verumpattamdar by himself or through his predecessors in interest uninterruptedly for a period of more than 12 years.....

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: I rise to a point of order under Standing Order 37. This discussion cannot go on. Standing Order 35 says "The report of the Select Committee any minutes that may have been recorded by individual members of the Committee and if the Bill has been amended. The Bill as amended by the committee shall be printed and copies furnished to each Member of the Council. The report and the minutes if any and if the Bill has been amended the Bill as amended for such portion thereof as may have been amended shall also unless otherwise directed by the Select Committee be published in the Gazette in the languages in which the original Bill was published and such publication shall be made in the Gazette at least 12 days prior to the commencement of the meeting at which the Bill is to be considered by the Council." That is 12 days earlier but any member may object to its being taken if the copy of the report is not been made available. Now on the analogy of the Standing Order 37 since this amendment has not been available for us for our use and study and our own interpretation, I raise the point that this amendment cannot now be discussed.

Mr. President: I rule that there is no objection.

Mr. M. Sivarama Menon *(Advocate-General)*: The first safe-guard that is sought to be introduced is that if a verumpattamdar has been in possession of a holding uninterruptedly for 12 years, the lease is not liable to be disturbed by a suit for eviction or for any purpose whatsoever. Religious and charitable institutions or a company whether incorporated or not cannot exercise the right of eviction for self-cultivation. In the case of religious institutions and companies artificial persons cannot engage themselves in self-cultivation. The right of eviction when permitted should be confined to the extent of three acres per head of the family of the landlord. I think that the safeguards provided in the amendments are reasonably sufficient for the purpose of satisfying those landlords who think that they have been prejudiced. The denial of the right

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